

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WESTERN & CLAY, LLC, a limited liability
company; SWINERTON BUILDERS
NORTHWEST, INC., a corporation;
CITIGROUP GLOBAL INVESTMENTS
REAL ESTATE LP, LLC, a limited liability
company,

Plaintiffs,

vs.

LANDMARK AMERICAN INSURANCE
COMPANY, an Oklahoma stock company;
AXIS SURPLUS INSURANCE COMPANY,
a corporation,

Defendants

NO. 02:09-cv-01423-MJP

**STIPULATED MOTION AND ORDER
CONTINUING TRIAL DATE AND
EXTENDING DISCOVERY,
DISPOSITIVE MOTION, AND OTHER
INTERIM CASE DEADLINES**

**NOTED ON MOTION CALENDAR:
August 11, 2010**

I. CONTINUANCE OF TRIAL DATE

Trial in this matter is currently scheduled to begin the week of March 14, 2011. Trial counsel for Defendants Landmark American Insurance Company and AXIS Surplus Insurance Company ("Defendants"), Mark Feinberg, has recently learned that his son is engaged to be married and that the wedding ceremony will take place on March 12, 2011 in Philadelphia.

**STIPULATED MOTION AND ORDER CONTINUING
TRIAL DATE AND EXTENDING DISCOVERY AND
DISPOSITIVE MOTION DEADLINES NO. 2:09-cv-01423-
MJP Page 1**

LAW OFFICES
BENNETT BIGELOW & LEEDOM, P.S.
1700 Seventh Avenue, Suite 1900
Seattle, Washington 98101
T: (206) 622-5511 / F: (206) 622-8986

1 Counsel for Plaintiffs Western & Clay LLC, Swinerton Builders Northwest, Inc. and Citigroup
2 Global Investments Real Estate LP LLC do not object to a continuance of the trial date in order
3 to allow Defendants' counsel to attend the wedding. Counsel for Plaintiffs and Defendants have
4 further conferred to coordinate their schedules and have agreed on an amended trial date of May
5 2, 2011, subject to the Court's approval. If that date is not acceptable to the Court, the parties
6 will make themselves available at the Court's convenience for a conference call to discuss case
7 scheduling and the setting of a trial date as soon as possible after May 2, 2011, should the Court
8 so desire.

10 II. DISCOVERY AND DISPOSITIVE MOTION DEADLINES

11 The current discovery cut-off is September 3, 2010, with dispositive motions due to be
12 filed and noted no later than October 4, 2010. Currently, one motion has been filed and is noted
13 for hearing on August 27, 2010.

14 The parties are continuing to work cooperatively in pursuing discovery and conducting
15 motion practice in a manner that is designed to narrow the factual and legal issues in dispute. To
16 date, they have participated in an all-day mediation session on two of the claims and an informal
17 meeting involving experts and project personnel, which clarified some factual bases of, and legal
18 theories underlying, their respective claims and defenses. The parties have also begun deposition
19 discovery. The parties believe, however, that receiving the Court's guidance on key issues of
20 policy interpretation would provide needed clarity on the scope of coverage under the policies,
21 would likely narrow the grounds of their dispute, and would potentially eliminate costly and
22 unnecessary discovery. Accordingly, the parties request that the Court extend the dispositive
23 motion deadline to November 19, 2010, which will leave the Court over four months to consider
24 such motions before the requested new trial date; extend the discovery cutoff to February 28,

2011, which will allow potentially unnecessary discovery to be avoided; and issue an amended case scheduling order containing other revised dates as follows:

| Case Event | Current Deadline | New Deadline |
|--|------------------|----------------------|
| All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter (see CR 7(d)) | 10/4/2010 | 11/19/2010 |
| All motions related to discovery must be filed by and noted on the motion calendar no later than the third Friday thereafter (see CR 7(d)) | 8/13/2010 | 1/21/2011 |
| Discovery completed by | 9/3/2010 | 2/28/2011 |
| Settlement conference | 1/13/2011 | 3/1/2011 |
| Motions in limine must be filed by and noted on the motion calendar no later than the third Friday thereafter (see CR 7(d)) | 2/14/2011 | 4/1/2011 |
| Settlement or mediation completed and 39.1 Settlement Report submitted by | 2/14/2011 | 4/1/2011 |
| Pretrial order submitted by | 3/2/2011 | 4/20/2011 |
| Pretrial conference | 3/4/2011 | 4/22/2011 at 1:30 PM |
| Trial briefs submitted by | 3/9/2011 | 4/27/2011 |
| Proposed voir dire/jury instructions to | 3/9/2011 | 4/27/2011 |
| Trial | 3/14/2011 | 5/2/2011 |

Accordingly, the parties STIPULATE and REQUEST the Court to issue a Minute Order reflecting these revised stipulated deadlines.

Dated this ____ day of August, 2010.

ZELLE HOFMANN VOELBEL
& MASON LLP

ASHBAUGH BEAL LLP

By Mark J. Feinberg
Mark J. Feinberg (admitted *pro hac vice*)
Roger D. Branigin (admitted *pro hac vice*)
mfeinberg@zelle.com
rbranigin@zelle.com
Attorneys for Defendants

By Zachary O. McIsaac
Zachary O. McIsaac, WSBA#35833
Richar T. Beal, Jr., WSBA#09203
zmcisaac@lawasresults.com
rbeal@lawresults.com
Attorneys for Plaintiffs

BENNETT BIGELOW & LEEDOM, P.S.

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP

By William J. Leedom
William J. Leedom, WSBA #2321
Timothy E. Allen, WSBA #35337
wleedom@bblaw.com
tallen@bblaw.com
Attorneys for Defendants

By Christopher A. Wright
Christopher A. Wright, WSBA #26601
cwright@WTHF.com
Attorneys for Plaintiffs

III. ORDER

PURSUANT TO THE ABOVE STIPULATION, THE COURT DOES HEREBY
ORDER that certain dates set forth in the Court's Stipulation and Order filed April 8, 2010, shall
be continued and extended as follows:

| Case Event | Current Deadline | New Deadline |
|--|------------------|--------------|
| All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter (see CR 7(d)) | 10/4/2010 | 11/19/2010 |
| All motions related to discovery must be filed by and noted on the motion calendar no later than the third Friday thereafter (see CR 7(d)) | 8/13/2010 | 1/21/2011 |

| | | |
|---|-----------|----------------------|
| Discovery completed by | 9/3/2010 | 2/28/2011 |
| Settlement conference | 1/13/2011 | 3/1/2011 |
| Motions in limine must be filed by and noted on the motion calendar no later than the third Friday thereafter (see CR 7(d)) | 2/14/2011 | 4/1/2011 |
| Settlement or mediation completed and 39.1 Settlement Report submitted by | 2/14/2011 | 4/1/2011 |
| Pretrial order submitted by | 3/2/2011 | 4/20/2011 |
| Pretrial conference | 3/4/2011 | 4/22/2011 at 1:30 PM |
| Trial briefs submitted by | 3/9/2011 | 4/27/2011 |
| Proposed voir dire/jury instructions to | 3/9/2011 | 4/27/2011 |
| Trial | 3/14/2011 | 5/2/2011 |

DATED this ____ day of August, 2010.


 THE HONORABLE MARSHA J. PECHMAN
 UNITED STATES DISTRICT COURT JUDGE

1 Presented by:


2
3 ZELLE HOFMANN VOELBEL
& MASON LLP

ASHBAUGH BEAL LLP

4
5 By


Mark J. Feinberg (admitted *pro hac vice*)
Roger D. Branigin (admitted *pro hac vice*)
mfeinberg@zelle.com
rbranigin@zelle.com
Attorneys for Defendants


By


Zachary O. McIsaac, WSBA#35833
Richard R. Beal, Jr., WSBA#09203
zmcisaac@lawasresults.com
rbeal@lawresults.com
Attorneys for Plaintiffs

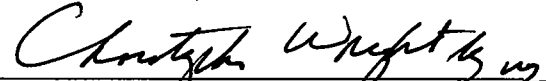
6
7
8
9 BENNETT BIGELOW & LEEDOM, P.S.

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP

10
11 By


William J. Leedom, WSBA #2321
Timothy E. Allen, WSBA #35337
wleedom@bblaw.com
tallen@bblaw.com
Attorneys for Defendants

By


Christopher A. Wright, WSBA #26601
cwright@WTHF.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Christopher A. Wright
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
cwright@WTHF.com

Zachary O. McIsaac, Esq.
Richard T. Beal, Jr.
ASHBAUGH BEAL LLP
zmcisaac@lawasresults.com
rbeal@lawresults.com

DATED: August 11, 2010

/s/ William J. Leedom
William J. Leedom, WSBA#2321

{2493.00001/M0189732.DOC; 1}